

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

77-2054

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CRUZ PADRO MARTINEZ,

Plaintiff-Appellant,

-against-

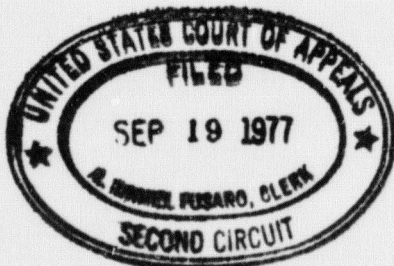
BENJAMIN MALCOLM, individually, and as
Commissioner of Correction of the City of New
York, PETER M. SCHAEFER, individually, and as
Warden of the Manhattan House of Detention for
Men, JAMES GORMAN, individually, and as
Captain of the New York County Court Detention
Pen,

Defendants-Appellees,

DR. "JOHN SANTOS", DR. "R. DANIELS", CAPT. "JOHN"
KING, individually, and in his capacity as
Correction Officer of the City of New York, A.
TURNER, DAVID WHITE, JOHN DOE No. 1, Shield No.
1363, JOHN DOE No. 2, Shield No. 1813, JOHN DOE
No. 3, Shield No. 830, JOHN DOE No. 4, Shield
No. 2151, JOHN DOE No. 5, Shield No. 250, JOHN
DOE No. 6, Shield No. 170, JOHN DOE No. 7,
Shield No. 1694, JOHN DOE No. 8, Shield No. 1679,
JOHN DOE No. 9, Shield No. 276, JOHN DOE No. 10,
Shield No. 1701, JOHN DOE No. 11, Shield No.
2067, individually, and as Correction Officers
of the City of New York,

Defendants.

APPENDIX AND EXHIBITS



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Project Director
BRONX LEGAL SERVICES, CORP. C.
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STEPHEN M. LATIMER, Of Counsel
Attorneys for Appellant

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT

Jury demand date: .

78 CIV. 5031

C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

CRUZ PADRO MARTINEZ

Plaintiff

-against-

BENJAMIN MALCOLM, individually and as Commissioner of Correction of the City of New York; PETER M. SCHAEFER, individually and as Warden of the Manhattan House of Detention For Men; JAMES GORMAN, individually and as Captain of the New York County Court Detention Pen; DR. "JOHN SANTOS"; DR. "R. DANIELS"; CAPT. "JOHN" KING, individually and in his capacity as correction officer of the City of New York; A. TURNER, DAVID WHITE, JOHN DOE No. 1, Shield No. 1363, JOHN DOE, No. 2, Shield No. 1413, JOHN DOE No. 3, Shield No. 330, JOHN DOE No. 4, Shield No. 2151, JOHN DOE, No. 5, Shield No. 210, JOHN DOE, No. 6, Shield No. 170, JOHN DOE, No. 7, Shield No. 1004, JOHN DOE, No. 8, Shield No. 178, individually and as Correction Officers of the City of New York,

Defendants

For plaintiff:

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993-6250

For defendant: Adrian P. Burke
Norman Redlich, Corp. Counsel
Municipal Building, N.Y.C. 10007

STATISTICAL RECORD

COSTS

DATE

NEW YORK COUNTY CLERK'S OFFICE

REC.

DEB.

S. 5 mailed

Clerk

S. 6 mailed

Marshal

Basis of Action: Civil Rights

Docket fee

Witness fees

Action arose at:

Depositions

(B)

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73 CH. 5031

DATE	PROCEEDINGS	Date Order or Judgment Note
ov.25-73	Filed complaint & issued summons.	
ov.25-73	Filed Order granting leave to commence & prosecute action in Forma, Pauperis. Bonsal, J.	
ec.6-73	Filed summons with marshals return. Served:	
	Benjamin Malcolm, Commissioner by Mr. Latham	on 11-28-73.
	Peter M. Schaefer, Warden, by P. Schaefer (Warden)	on 11-28-73.
	James Lorman, Capt. by Capt. Ruda	on 11-28-73.
ec.6-73	Filed plttf's first set of interrogs.	
ec.28-73	Filed deft's (The City of N.Y. Municipal Building) affidavit & notice of motion to dismiss complaint ret. 1-7-74.	
ec.28-73	Filed deft's memorandum of law in support of motion ret. 1-7-74.	
an.18-74	Filed plttf's affidavit & notice of cross-motion Re: interrogs ret. 1-21-74.	
an.18-74	Filed plttf's memorandum in opposition to motion to dismiss.	
an.23-74	Filed plttf's affidavit & notice of motion to transfer him ret. 1-28-74.	
an.31-74	Filed deft's memorandum of law, in support of his motion to dismiss.	
an.31-74	Filed deft's (affidavit & notice of motion to dismiss complaint as, to deft. James Gorman ret. 2-15-74.	
eb.7-74	Filed MEMORANDUM DECISION: Deft. Malcolm, the commissioner of Correction of the City of N.Y. moves to dismiss the complaint as, against him, motion is granted, with leave to plttf. to serve & file an amended complaint within 20 days. Plttf's motion for an, order directing the entry of judgment by default against Malcolm, is denied. Plttf's motion to compel Malcolm to answer interrogs, is denied without prejudice. As to deft's Schaefer & Gorman, are, directed to serve & file answers to plttf's interrogs within 20, days. Plttf's motion for a transfer is denied. So ordered. Bonsal, J. m/n	
eb.13-74	Filed summons with marshals return: Served:	
	Capt John King at hospital by Dep. Bamberger	on 1-16-74.
	A. Turner by Capt. R. Reutter, NYC Dept of Correction	on 1-11-74.
	N.Y.C. Detention Pen by Capt. R. Reutter	on 1-11-74.
eb.27-74	Filed affidavit of S.M. Latimer in opposition to deft's motion to, dismiss.	
eb.27-74	Filed plttf's amended complaint.	
pr.5-74	Filed plttf's affidavit & notice of motion rendering judgment by, default against deft.'s Schaefer & Gorman ret. 4-15-74.	
pr.16-74	Filed MEMORANDUM: plttf's motion for a default judgment is denied. Schaefer & Gorman will serve & file answers to plttf's interrogs, & Malcolm, Schaefer & Gorman will serve & file answers to plttf's, amended complaint on or before 5-6-74. If they fail to do so, plttf. may again move for a default judgment. Settle order on, notice. Bonsal, J. m/n	
av.1-74	Filed Order that motion of deft's Malcolm, Schaefer & Gorman to dismiss, amended complaint is denied. Said deft's shall serve & file their, answer to amended complaint before 5-6-74. Serve & file answers, to plttf's interrogs before 5-6-74. If they fail to answer plttf, may move for judgment by default. Bonsal, J. m/n	
ay.15-74	Filed ANSWER to amended complaint. by deft's Malcolm, Schaefer, & Gorman.	A.P.E
ec.12-74	Filed plttf's affidavit & notice of motion Re: testimony ret. 9-9-74.	
ec.12-74	Filed plttf's memorandum in support of motion ret. 9-9-74.	
Aug.12-74	Filed Plttf's Notice to take deposition of Peter M. Schaefer, James Gorman and Capt. "JOHN" King. Three Subpoena issued.	

9-74 Filed Memo-endorsed on Petitioner's motion filed 8-12-74 :
Motion marked off. So ordered. Bonsal, J.

11-24-75 Filed ORDER that parties shall prepare & submit pretrial order before 3/15/76
in order that matter may be duly calendared for trial. Failure to comply
with results in grounds for dismissal for lack of prosecution. Bonsal, J.
(mn)

11-24-75 Before Bonsal, J. Pre-trial conference held.

05-17-76

02-23-77 Filed affdvt. of Stephen M. Latimer in support for writ of habeas
corpus ad testificandum for James Sims. Writ issued ret: 3-1-77.

02-23-77 Filed affdvt. of Stephen M. Latimer in support for writ of habeas
corpus ad testificandum for Cruz Padro Martinez. Writ issued ret: 3-1-77.

03-11-77 Filed Judgement that defts have jdgmt against plttf
dismissing the complaint as to all defts. Clerk. m/n

03-11-77 Jury Trial begun & cont'd before Bonsal J.

03-04-77 trial contd

03-08-77 Trial cont'd & concluded Jury verdict for defts.

03-17-77 Filed Notice of Motion by plttf re: an order pursuant to
FRCP 50[b] for jdgmt notwithstanding the verdict.
ret. 4/11/77

03-23-77 Filed plttf's memo in support of its motion for jdgmt notwith
standing the verdict.

04-08-77 Filed defts memo in opposition to plttf's motion for
jdgmt notwithstanding the verdict.

04-14-77 Filed memo end on entry docketed 3/17/77 re: motion denied
after oral argument, BONSAJ J. m/n

05-17-77 Filed plttf's notice of appeal from judgment of 3-9-77. Mailed copies

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Memo - Decision

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CRUZ PADRO MARTINEZ,

Plaintiff,

-against-

BENJAMIN MALCOLM, et al.,

Defendants.
-----X

#40339
73 Civ. 50

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
7 11 02 AM '74

MEMORANDUM

DONCAL, D. J.

This is a civil rights action under 42 U.S.C. §1983 in which plaintiff alleges violation of his federal constitutional rights while an inmate in the Manhattan House of Detention for Men awaiting trial. Defendant Malcolm, the Commissioner of Correction of the City of New York, moves to dismiss the complaint/pursuant to Fed. R. Civ. P. 12, for failure to state a claim upon which relief can be granted. Plaintiff cross moves for an order pursuant to Fed. R. Civ. P. 37(a)(2) to compel defendants Malcolm, Schaefer, and Gorman to answer interrogatories submitted under Fed. R. Civ. P. 33 and for an order pursuant to Fed. R. Civ. P. 37(b)(2)(C) directing the entry of judgment by default against Malcolm in the event that he fails to comply with the order within

10 days of the date of entry thereof. Plaintiff further moves for an order directing his transfer from the Manhattan House of Detention to the "Federal Detention Facility" in Manhattan during the pendency of the present action.

In his complaint, plaintiff alleges that on July 26, 1973 he was beaten without provocation by a number of correction officers, as a result of which he suffered serious injuries; that he was thereafter taken to the "Rikers Island complex" where he was placed in a maximum security cell and denied medical treatment for his injuries until July 31, 1973; and that upon his return to the Manhattan House of Detention several weeks later, he discovered that his cell had been ransacked and that various articles of clothing, personal objects, and legal books, papers, and records were missing.

Malcolm's Motion to Dismiss

"The rule in this circuit is that when monetary damages are sought under §1983, the general doctrine of respondent superior does not suffice and a showing of some personal responsibility of the defendant is required." Johnson v. Glick, 491 F.2d 1020, 1034 (2d Cir. 1973). The only specific reference to Malcolm in the complaint is that "[h]e is responsible for the administration and operations of all institutions under the care custody and control of the Department of Correction of the City of New York." This

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allegation is insufficient to state a cause of action against Malcolm. Defendant Malcolm's motion to dismiss the complaint as against him is granted, with leave to plaintiff to serve and file an amended complaint within 20 days.

Plaintiff's motion for an order pursuant to Fed.R.Civ.P. 37(b)(2)(C) directing the entry of judgment by default against Malcolm is denied.

Plaintiff's Cross-Motion to Compel Discovery

In view of the foregoing, plaintiff's motion to compel Malcolm to answer interrogatories is denied without prejudice.

As to defendants Schaefer and Gorman, plaintiff's interrogatories were served with the complaint on November 23, 1973. Fed. R. Civ. P. 33 provides to the extent here relevant that "a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant." The court granted these defendants until January 25 to submit additional answering papers, but none have been filed. Therefore, defendants Schaefer and Gorman are directed to serve and file answers to plaintiff's interrogatories within 20 days. Fed. R. Civ. P. 37.

Plaintiff's Motion for a Transfer from the Manhattan House of Detention to the "Federal Detention Facility" in Manhattan

Plaintiff alleges that a transfer from the Manhattan House of Detention to the "Federal Detention Facility" during

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the pendency of this action is necessary to protect his personal safety. However, plaintiff's counsel cites no authority, and the court has found none, authorizing such a transfer. Plaintiff's motion for a transfer is therefore denied.

It is so ordered.

Dated: New York, N. Y.
February 7, 1974.

DUDLEY B. BONSAI

U. S. D. J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CRUZ PADRO MARTINEZ,

Plaintiff

-against-

BENJAMIN MALCOLM, individually and
as Commissioner of Correction of the
City of New York, PETER M. SCHAEFER,
individually and as Warden of the
Manhattan House of Detention for Men;
JAMES GORMAN, individually and as
Captain of the New York County Court
Detention Pen; DR. "JOHN SANTOS";
DR. "R. DANIELS"; CAPT. "JOHN" KING,
individually and in his capacity as
correction officer of the City of
New York; A. TURNER, DAVID WHITE,
JOHN DOE No. 1, Shield No. 1363,
JOHN DOE No. 2, Shield No. 1813,
JOHN DOE No. 3, Shield No. 830,
JOHN DOE No. 4, Shield No. 2151,
JOHN DOE No. 5, Shield No. 250,
JOHN DOE No. 6, Shield No. 170,
JOHN DOE No. 7, Shield No. 1694,
JOHN DOE No. 8, Shield No. 1679,
JOHN DOE No. 9, Shield No. 276,
JOHN DOE No. 10, Shield No. 1701,
JOHN DOE No. 11, Shield No. 2067,
individually and as Correction
Officers of the City of New York,

Defendants
-----x

73 C 5031

JUDGE BONSALE

AMENDED COMPLAINT

FILED
U.S. DISTRICT COURT
S.D. N.Y.
FEB 27 1 15 PM '74

74 FEB 27 1 15 PM '74

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 USC 1343
to redress deprivations of rights, privileges and immunities
guaranteed Plaintiff under 42 USC 1981 et. seq. and the U.S.
Constitution including but not limited to the First, Eighth and
Fourteenth Amendments. This Court has jurisdiction of any state
law claims under the doctrine of pendent jurisdiction.

PARTIES

2. Plaintiff is detained in Manhattan House of Detention for Men ("The Tombs") awaiting trial on an indictment in Supreme Court, New York County. At the time of the incidents he was a member of the inmate council.

3. Defendant Benjamin Malcolm is Commissioner of Correction of the City of New York. He is responsible for the administration and operations of all institutions under the care, custody and control of the Department of Correction of the City of New York. Peter M. Schaefer is Warden of the Tombs. On information and belief, James Gorman is Captain of the Detention Pens located in the Criminal Court Building, 100 Centre Street, New York, New York. Schaefer and Gorman are responsible for the administration and operation of their respective facilities. They are responsible for supervising the conduct of Correction Department employees within their respective institutions. Defendant "John" King is a correction officer with the rank of Captain. He is the officer in charge of the hospital at the Rikers Island Prison complex.

4. On information and belief Dr. "John Santos" and "Dr. R. Daniels" are physicians employed by the Department of Correction. They were on duty at the Rikers Island complex between July 26 and August 1, 1973.

5. A. Turner, David White and John Does 1-8, bearing shield numbers 1363, 1813, 830, 2151, 250, 170, 1694 and 1679 respectively, are correction officers employed by the New York City Department of Correction. They were working at the New York County Detention Pens on July 26, 1973.

6. John Does 9-11, bearing shield numbers 276, 1701 and 2067 are correction officers employed by the New York City Department of

Correction. On December 11, 1973 they were charged with ⁰⁰⁰⁰¹⁰ escorting Plaintiff to Bellevue Hospital.

7. On information and belief, Malcolm's duties include overall responsibility for ensuring that only qualified personnel are employed by the Department of Correction as Correction Officers. He is responsible for assuring that all Correction Department employees are properly trained and supervised. He is responsible for ensuring that correction officers who are sadistic or otherwise

abuse prisoners are not placed in position requiring regular inmate contact. On information and belief, Defendants Schaefer, Gorman and King are responsible for the training and supervision of Correction Department employees assigned to their respective institutions. They are responsible for screening correction officers who are sadistic or otherwise abuse prisoners and ensuring that those officers do not have regular contact with inmates in their respective institutions.

8. On information and belief, Defendant King is charged with the responsibility for assuring that all prisoners sent to the hospital receive prompt and adequate medical care.

FACTS

9. On July 26, 1973 Plaintiff was in the Detention Pen for Supreme Court Part 39 with several other detainees. A dispute broke out between a detainee and Defendant Turner. During the dispute the detainee cursed at Turner. Turner asked who cursed at him. Plaintiff replied that no one did and if something was said Turner provoked it.

10. Turner then ordered Plaintiff out of the cell and, without provocation, began punching Plaintiff in the face with his fists. Plaintiff, acting in self-defense, grabbed Turner in an attempt to

stop the beating. At that point an unidentified correction officer, who upon information and belief is one of the John Doe Defendants, 000011 grabbed Plaintiff and assisted Turner in pushing him into an unoccupied cell.

11. Once in the unoccupied cell Defendants Turner, White and John Does 1-8 beat and kicked Plaintiff without provocation. Plaintiff was then taken to yet another cell where he was strapped to the bars and severely beaten by Defendants Turner, White and John Does 1-8. Plaintiff remained strapped to the bars for three hours during which time his requests to see an attorney and for medical attention were denied.

12. As a result of the beatings Plaintiff suffered severe injuries, including but not limited to a head concussion, various contusions and abrasions, internal bleeding and a fractured cheekbone.

13. Plaintiff was then taken to the Rikers Island complex where, without explanation, he was placed in a maximum security cell.

Although he was visited by Drs. Santos and Daniels on July 26, 1973, he was denied medical treatment for the injuries sustained as a result of the beatings until July 31, 1973 when he was finally taken in for x-rays. When he brought his plight to the attention of Capt. King on July 27, 1973, Plaintiff was advised that he was brought to Rikers Island for security and not medical reasons.

14. Upon return to the Tombs several weeks later Plaintiff discovered that his cell had been ransacked and that various articles of clothing, personal objects, and legal books, papers and records were missing.

15. On December 11, 1973, two weeks after the summons and complaint in this action was served on Defendants Malcolm, Schaefer and Gorman, Plaintiff was taken to Bellevue Hospital. He was escorted by John Does 9, 10 and 11.

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16. At the hospital John Does 9, 10 and 11 got on the ~~0000.1~~ with Plaintiff. When the door closed John Does 9, 10 and 11 beat and kicked him, causing him physical injury. They then returned to the Tombs where Plaintiff saw a physician. He was not examined by a doctor at Bellevue Hospital that day.

FIRST CLAIM

17. The unprovoked attacks on Plaintiff by the correction officers on July 26, 1973 without provocation caused him to suffer severe personal injuries.

18. The mistreatment of Plaintiff by the Defendant guards and doctors is not an isolated instance. The fact that inmates of the Tombs are beaten and mistreated in the Tombs and in the Detention Pens is well known to Defendants Malcolm, Schaefer and Gorman.

They are each required to take therapeutic action to prevent these abuses.

19. The unprovoked beating was in violation of the Eighth Amendment prohibition against cruel and unusual punishment.

SECOND CLAIM

20. Plaintiff repeats and realleges each and every allegation of paragraphs 1-16.

21. Plaintiff was deliberately and for punitive reasons denied medical treatment by the defendants for a period of five days in spite of the severe injuries he suffered.

22. The denial and refusal to render prompt and adequate medical care to Plaintiff at the hospital is not an isolated instance. The fact that inmates are often denied medical care is well known to Capt. King. He is required to take therapeutic action to correct this situation.

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23. The denial of medical treatment constitutes cruel and unusual punishment in violation of the Eighth Amendment.

THIRD CLAIM

24. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-16.

25. It is impossible for the destruction of Plaintiff's personal effects as alleged in paragraph 14 to have occurred without the knowledge, consent, permission or participation of the responsible Correction Department Officials. The wanton loss and destruction of this property including legal materials necessary for the defense of the pending indictment constitutes a violation of Plaintiff's rights under the Sixth and Eighth Amendments.

FOURTH CLAIM

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-16.

27. On information and belief, on or before December 11, 1973 Defendants Malcolm, Schaefer and John Does 9, 10 and 11 conspired together, and wilfully and maliciously conspired to deprive Plaintiff of his civil rights in violation of 42 USC 1985 by punishing Plaintiff for his conduct in filing the instant action, in violation of the First and Fourteenth Amendments to the U.S. Constitution.

28. On information and belief, in furtherance of the conspiracy, and with knowledge of Defendants Malcolm and Schaefer, John Does 9, 10 and 11 committed the acts alleged in paragraphs 15 and 16 as steps in the conspiracy to punish Plaintiff for the valid exercise of his First and Fourteenth Amendment rights.

FIFTH CLAIM

13A

29. On or about January 15, 1974, during a memorial service for the late Dr. Martin Luther King, Jr., Plaintiff addressed the gathering, stating that a proper tribute to Dr. King would be to correct injustices in the penal system and the courts.

30. On information and belief, Defendants Malcolm and Schaefer, between January 15, 1974 and January 18, 1974 conspired together, and wilfully and maliciously conspired to deprive Plaintiff of his civil rights in violation of 42 USC 1985 by punishing him for his statements made on January 15, 1974, in violation of the First and Fourteenth Amendments to the United States Constitution.

31. On information and belief, in furtherance of the conspiracy Defendants Malcolm and Schaefer did, or caused to be done, the acts alleged in paragraphs 32 and 33. On information and belief, all of those acts were done at the direction of Malcolm and Schaefer as steps in the conspiracy to deprive Plaintiff of his rights under the First and Fourteenth Amendments, and to punish Plaintiff for his statements.

32. On January 18, 1974 Plaintiff was placed in punitive segregation without a hearing and without being advised of the nature of the charges against him.

THE FOLLOWING IS A TRUE COPY OF THE ORIGINAL DOCUMENT, BY DELIVERING A TRUE COPY TO THE PERSON TO WHOM IT IS TO BE DELIVERED, I HEREBY CERTIFY THAT THE PERSON TO WHOM IT IS TO BE DELIVERED IS THE PERSON MENTIONED AND DESCRIBED IN THE PRECEDING PAGE(S).

Day of _____ 19____

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33. In the afternoon of January 21, 1974 a disciplinary hearing was held against Plaintiff. Although he requested that counsel be present, that request was denied. At the hearing charges were dismissed, but Plaintiff was not released from punitive segregation and placed in his usual cell until sometime the morning of January 22, 1974, more than 15 hours later.

34. The actions complained of in paragraphs 29-33 violate Plaintiff's rights under the First, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and 42 USC 1985.

WHEREFORE, Plaintiff prays:

1. That he be transferred to a Federal Detention facility for safekeeping during the pendency of the action.
2. That the Court award damages to Plaintiff against each Defendant in the sum of \$100,000.00.
3. That Defendants pay the costs of the action including counsel fees.
4. For such other and further relief as to the Court may seem just and proper.

BRONX LEGAL SERVICES CORP. B

By:

Hansel L. McGee
HANSEL L. MCGEE
Chief Attorney
579 Courtlandt Avenue
Bronx, New York 10451
Tel.: 993-6250
STEPHEN M. LATIMER, of Counsel

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CRUZ PADRO MARTINEZ,

Plaintiff,

-against-

BENJAMIN MALCOLM, et al.,

Defendants.
-----x

73 Civ. 5031

MEMORANDUM

BONSAL, D. J.

This is a civil rights action under 42 U.S.C. §§ 1983 and 1985 in which plaintiff alleges violations of his federal constitutional rights while an inmate in the Manhattan House of Detention for Men awaiting trial. Plaintiff seeks damages against each defendant in the amount of \$100,000. The defendants include Benjamin Malcolm, Commissioner of Correction of the City of New York, Peter M. Schaefer, Warden of the Manhattan House of Detention for Men, and James Gorman, Captain of the New York County Court Detention Pen.

The complaint in this action was dismissed as against Malcolm by Order of this Court filed February 7, 1974, with leave to serve and file an amended complaint within 20 days. On

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January 31, 1974, Gorman served and filed a notice of motion to dismiss the complaint as against him pursuant to Fed.R.Civ.P. 12 for failure to state a claim upon which relief can be granted. Prior to the return date of Gorman's motion, plaintiff on February 27, 1974 filed an amended complaint. At oral argument held on March 4, 1974, Gorman amended his motion to include Malcolm and to have the motion originally addressed to the complaint addressed to the amended complaint. Finally, on April 5, 1974 plaintiff filed a notice of motion returnable April 15, 1974 for an order pursuant to Fed.R.Civ.P. 37(b)(2)(C) rendering a judgment by default against defendants Schaefer and Gorman for failure to serve and file answers to plaintiff's interrogatories.

Motion of Gorman and Malcolm to Dismiss the Amended Complaint

Plaintiff's original complaint alleged that on July 26, 1973, while in the detention pen for Supreme Court Part 39, plaintiff was beaten without provocation by a number of correction officers, as a result of which he suffered serious injuries; that he was thereafter taken to the "Rikers Island complex" where he was placed in a maximum security cell and denied medical treatment for his injuries until July 31, 1973; that upon his return to the Manhattan House of Detention several weeks later, he discovered that his cell had been ransacked and that various

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articles of clothing, personal objects, and legal books, papers, and records were missing.

In addition to the allegations of the original complaint, plaintiff's amended complaint alleges that on December 11, 1973, two weeks after the summons and complaint in this action were served on Malcolm, Schaefer, and Gorman, plaintiff was beaten in a Bellevue Hospital elevator by several correction officers, sustaining physical injury; that Malcolm, Schaefer, and Gorman know that inmates of the Manhattan House of Detention for Men are beaten and mistreated in the House of Detention and in the detention pens; that Malcolm, Schaefer, and Gorman are "required to take therapeutic action to prevent these abuses"; that the beating of plaintiff in the Bellevue Hospital elevator on December 11, 1973 was in furtherance of a conspiracy among Malcolm, Schaefer, and the several correction officers to deprive plaintiff of his civil rights by punishing him for filing the instant action; that between January 15 and January 18, 1974 Malcolm and Schaefer conspired together to deprive plaintiff of his civil rights by punishing him for telling a gathering during a memorial service for the late Dr. Martin Luther King, Jr. on January 15, 1974 that a proper tribute to Dr. King would be to correct injustices in the penal system and the courts; that in furtherance of this conspiracy and "at the direction of Malcolm and Schaefer," plaintiff

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was placed in punitive segregation on January 19, 1974 without a hearing and without being advised of the nature of the charges against him, was denied counsel at a disciplinary hearing held on the afternoon of January 21, 1974, and was not released from punitive segregation and placed in his usual cell until some time on the morning of January 22, 1974, more than 15 hours after the charges were dismissed against him at the hearing.

Plaintiff's allegations that Gorman had some personal responsibility for the beating plaintiff allegedly sustained in the detention pen for Supreme Court Part 39 and that with Malcolm's complicity plaintiff was punished by beating and punitive segregation because of his political ideas and because of the present action, are sufficient to withstand the motion of Gorman and Malcolm to dismiss the amended complaint. See Wright v. McMann, 460 F.2d 126 (2d Cir.), cert. denied, 409 U.S. 885 (1972); Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972). Cf. Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973). Accordingly, the motion of Gorman and Malcolm to dismiss the amended complaint is denied.

Plaintiff's Motion for a Default Judgment

By Order of this Court filed February 7, 1974, defendants Schaefer and Gorman were directed to serve and file answers to plaintiff's interrogatories within 20 days. On March 4, 1974,

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at oral argument held on the motion of Gorman and Malcolm to dismiss the amended complaint, Schaefer and Gorman were given until March 10, 1974 to serve and file answers to plaintiff's interrogatories.

No answers to plaintiff's interrogatories had been filed as of April 15, 1974, nor did defendants Schaefer and Gorman appear or file answering papers on that date, when plaintiff's motion for a default judgment was heard.

While no reason appears for the failure of defendants Schaefer and Gorman to answer plaintiff's interrogatories, the Court deems entry of a default judgment against them inappropriate at the present time. Therefore, plaintiff's motion for a default judgment is denied. Schaefer and Gorman will serve and file answers to plaintiff's interrogatories, and Malcolm, Schaefer, and Gorman will serve and file answers to plaintiff's amended complaint on or before May 6, 1974. If they fail to do so, plaintiff may again move for a default judgment.

Settle order on notice.

Dated: New York, N. Y.
April 16, 1974.

W. B. Bal
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CRUZ PADRO MARTINEZ,

Plaintiff,

-against-

BENJAMIN MALCOLM, et al.,

Defendants.
-----x

ORDER 000020

INDEX NO.
73 Civ. 5031

Plaintiffs and defendants having applied to the court for relief as follows!

1. Defendants MALCOLM and GORMAN moved to dismiss the amended complaint.

2. Plaintiff moved to compel answers to interrogatories. That motion was granted on February 7, 1974, as to SCHAEFER and GORMAN and defendants have not complied with the courts order.

3. Plaintiff moved for default judgment against SCHAEFER and GORMAN pursuant to FRCP 37 (b) (2) (c); and the court after reading the affidavits submitted by the parties, and hearing oral argument, having filed its memorandum on April 16, 1974.

Now, upon motion of STEPHEN M. LATIMER attorney for plaintiff it is ORDERED:

1. The motion of GORMAN and MALCOLM to dismiss the amended complaint is denied.

2. Defendants MALCOLM, SCHAEFER and GORMAN shall serve and file their answer to the amended complaint on or before May 6, 1974.

3. Defendants SCHAEFER and GORMAN shall serve and file answers to plaintiff's interrogatories on or before May 6, 1974.

00002-~~000000~~
4. In the event defendants MALCOLM, SCHAEFER and

GORMAN fail to comply with paragraphs 2 and 3 of this order,
PLAINTIFF MAY MOVE FOR

DB: the court shall enter judgment by default against the appropriate
party an accordance with FRCP 55 (b) (2).

DATED: NEW YORK, NEW YORK

April 27, 1974

DUNGE B BOONE

USDU

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

000022

CRUZ PADRO MARTINEZ,

Plaintiff,

-against-

BENJAMIN MALCOLM, individually and
as Commissioner of Correction of the
City of New York, PETER M. SCHAEFER,
individually and as Warden of the
Manhattan House of Detention for Men;
JAMES GORMAN, individually and as
Captain of the New York County Court
Detention Pen; DR. "JOHN SANTOS";
DR. "R. DANIELS"; CAPT. "JOHN" KING,
individually and in his capacity as
correction officer of the City of
New York; A. TURNER, DAVID WHITE,
JOHN DOE No. 1, Shield No. 1363,
JOHN DOE No. 2, Shield No. 1313,
JOHN DOE No. 3, Shield No. 330,
JOHN DOE No. 4, Shield No. 2151,
JOHN DOE No. 5, Shield No. 250,
JOHN DOE No. 6, Shield No. 170,
JOHN DOE No. 7, Shield No. 1694,
JOHN DOE No. 8, Shield No. 1579,
JOHN DOE No. 9, Shield No. 276,
JOHN DOE No. 10, Shield No. 1701,
JOHN DOE No. 11, Shield No. 2067,
individually and as Correction
Officers of the City of New York,

Defendants.

ANSWER TO AMEND
COMPLAINT

73 C 5031

JUDGE BONSAI

DEFENDANTS,
MALCOLM, SCHAEFER
AND GORMAN, DE LA
TRIAL BY JURY

RF# 704-300

LD# 9687-73

The defendants, Benjamin Malcolm, individually and
as Commissioner of Correction of the City of New York, here-
inafter referred to as Malcolm; Peter M. Schaefer, individually
and as Warden of The Manhattan House of Detention for Men,
hereinafter referred to as Schaefer; and James Gorman,
individually and as Captain of the New York County Court
Detention Pen, hereinafter referred to as Gorman, answering
the amended complaint herein,

AS TO JURISDICTION:

FIRST: Deny each and every allegation 000023 contained in paragraph of the amended complaint designated "1".

AS TO THE PARTIES:

SECOND: Deny each and every allegation contained in the amended complaint designated "3", "4", "5", "6", "7" and "8" except that defendant Malcolm is Commissioner of Correction of the City of New York; defendant Schaefer was Warden of the Manhattan House of Detention for Men; defendant Gorman was Captain of the Detention Pens in the Criminal Court Building, New York; Arthur Tudor s/h/a A. Turner; David White; Charles Bowens s/h/a John Doe #1, Shield No. 1363; Joseph McNulty s/h/a John Doe #2, Shield No. 1313; Dominic Merante s/h/a John Doe #4, Shield No. 256; Theodore Holly s/h/a John Doe #5, Shield No. 1694 and Arthur Post s/h/a John Doe #6, Shield No. 1679 were Correction Officers of the New York City Department of Corrections and that physicians are employed to provide medical care at the Rikers Island Complex and that the duties and responsibilities of all of the aforementioned are defined in the Administrative Code and the Charter of the City of New York and in the Rules and Regulations of the Department of Correction of the City of New York.

AS TO THE FACTS:

THIRD: Deny each and every allegation contained in paragraph of the amended complaint designated "9" insofar as the same are evidentiary and should be reserved for the court at the trial of this action.

FOURTH: Deny each and every allegation 000024 in paragraphs of the amended complaint designated "10", "11", "12", "13", "14", "15" and "16".

AS TO THE FIRST CLAIM:

FIFTH: Deny each and every allegation contained in paragraphs of the amended complaint designated "17", "18" and "19".

AS TO THE SECOND CLAIM:

SIXTH: Deny each and every allegation contained in paragraphs of the amended complaint designated "20" except as otherwise pleaded herein.

SEVENTH: Deny each and every allegation contained in paragraphs of the amended complaint designated "21", "22" and "23".

AS TO THE THIRD CLAIM:

EIGHTH: Deny each and every allegation contained in paragraph of the amended complaint designated "24" except as otherwise pleaded herein.

NINTH: Deny each and every allegation contained in paragraph of the amended complaint designated "25".

AS TO THE FOURTH CLAIM:

TENTH: Deny each and every allegation contained in paragraph of the amended complaint designated "26" except as otherwise pleaded herein.

000025

ELEVENTH: Deny each and every allegation contained in paragraph of the amended complaint designated "27" and "28".

AS TO THE FIFTH CLAIM:

TWELFTH: Deny each and every allegation contained in paragraph of the amended complaint designated "29" except as otherwise pleaded herein.

THIRTEENTH: Deny each and every allegation contained in paragraphs of the amended complaint designated "30", "31", "32", "33" and "34".

AS AND FOR SEPARATE DEFENSES, THE DEFENDANTS, MALCOLM, SCHAEFER AND GORMAN, ALLEGE:

FOURTEENTH: Plaintiff failed to state causes of action under the FIRST (1st), EIGHTH (8th) and FOURTEENTH (14th) amendments to the United States Constitution.

FIFTEENTH: Plaintiff fails to state a cause of action under 42 USCA 1981 et. seq.

SIXTEENTH: The plaintiff at all times had, and still has available to him, adequate and sufficient opportunity for relief in the Courts of the State of New York.

SEVENTEENTH: At all the times mentioned in the amended complaint, The City of New York maintained and operated a Department of Correction as provided by law and that the correction officers attached to said department were obliged

to maintain order in various correctional institutions in The City of New York and to see that said institutions including the Detention Pens at the Criminal Courts Buildings, were run and operated in an orderly manner. 000026

EIGHTEENTH: At no time did the defendants, Malcolm, Schaefer and Gorman, or any of the correction officers, commit any of the acts alleged in the amended complaint, but if it be determined that any of the correction officers did commit any of the said acts, and if it be determined that such acts were committed within the scope of their employment as correction officers, then all such acts were performed in good faith, without malice and with reasonable and probable cause in the performance of their duties as correction officers of the Department of Correction of The City of New York.

NINETEENTH: That the plaintiff first violently and viciously made an assault against and upon the body and person of Arthur Tudor, that said person thereupon necessarily defended himself; that all of the acts of the correction officers were committed in the necessary protection of their bodies and persons.

TWENTIETH: That the defendants, Malcolm, Schaefer and Gorman, are not amenable to a suit under the doctrine of respondent superior.

TWENTY-FIRST: The defendants, Malcolm, Schaefer and Gorman, are immune to a suit for damages based on the performance of their official duties as, Commissioner of

000027

Correction of the City of New York; Warden of the Manhattan House of Detention for Men; and Captain of the New York County Court Detention Pens, respectively.

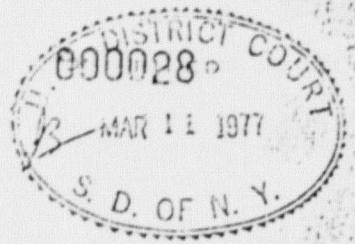
WHEREFORE, the defendants, Malcolm, Schaefer and Gorman, demand judgment dismissing the amended complaint herein, with costs.

ADRIAN P. BURKE
Corporation Counsel
Attorney for Defendants
Benjamin Malcolm, individually
and as Commissioner of Correction
of the City of New York, herein-
before referred to as Malcolm;
Peter M. Schaefer, individually
and as Warden of the Manhattan
House of Detention for Men,
hereinafter referred to as
Schaefer; and James Gorman,
individually and as Captain
of the New York County Court
Detention Pen, hereinafter
referred to as Gorman
Office & P.O. Address:
Municipal Building
Borough of Manhattan
New York, N. Y. 10007

SAUL BERNSTEIN

By

SAUL BERNSTEIN



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CRUZ PADRO MARTINEZ

Plaintiff

: 73 Civil 5031 (DBB)

-against-

BENJAMIN MALCOLM, individually and as
Commissioner of Correction of the City
of New York, et al

: JUDGMENT

Defendants
----- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Dudley B. Bonsal, United States District Judge, and a jury, on March 3, 4 and 8, 1977, and the jury having returned a verdict in favor of, the defendants, it is,

ORDERED, ADJUDGED and DECREED: That defendants BENJAMIN MALCOLM, individually and as Commissioner of Correction of the City of New York, et al, have judgment against the plaintiff CRUZ PADRO MARTINEZ dismissing the complaint as to all defendants.

Dated: New York, N.Y.
March 11, 1977

Raymond F. Berglund
Clerk

000029

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CRUZ PADRO MARTINEZ,

Plaintiff,

-against-

BENJAMIN MALCOLM ET.AL.,

Defendants.

NOTICE OF APPEAL

73 CIV 5031 (DBB)

Please take notice that plaintiff appeals to the United States Court of Appeals for the Second Circuit from the Judgment of this court entered March 9, 1977 after general verdict of a jury, and from an order of this Court entered April 14, 1977 denying plaintiffs motion for judgment notwithstanding the verdict or for a new trial.

DATED: New York, New York
May 9, 1977

Yours,

EMILIO P. GAUTIER

Project Director

BRONX LEGAL SERVICES, CORP. C

579 Courtlandt Avenue

Bronx, New York 10451

Tele: (212) 993-6250

Stephen M. Latimer, of Counsel

Department of Correction — Intradepartmental Memorandum

Date : 6-25-73
From : JAMES-LEE-SIMS
To : 349-73-6190 - 10.00
Subject : Above Inmate made this statement
unable to express self in English

000030

M.H.D

Officer Called for inmate
going to R.I. Inmate said
said He wants to go to R.I.

Officer said why didn't you come
but when I called R.I. Inmate said
"Fuck you" and ~~and~~ officer open
gate to let inmate out for R.I.

Inmate came out shouting off
and raised hands to officer as
if to hit him, officer grabbed him
and

Inmate's statement written by Co. James Sims
about 10:00 (J. Capt. Williams)

James Sims

James Sims

James Sims

000031

James Sims

James Sims

James Sims

Authtn 3/2/77

John W. Star

INJURY TO INMATE REPORT

DEPARTMENT OF CORRECTION
CITY OF NEW YORK

INSTITUTION

MAN H.O.M.

DATE

7/1

INSTRUCTIONS: Original And One Copy -- Original To Legal Division -- Copy To Inmate Folder.

TO BE COMPLETED BY EMPLOYEE: Please Print.

000032

INMATE

MARTINEZ, RICHARD

316-544

Location

Work

DETAILS:

INMATE MARTINEZ, failed to respond when call for help was announced. He later used abusive language when gate was opened and raised hands fight.

EMPLOYEE ☒ I (DID/DID NOT) WITNESS THIS INJURY.

Signature

C. J. W. H.

Shield/ID No.

115

TO BE COMPLETED BY MEDICAL STAFF

NATURE OF INJURY AND CAUSE:

Date Of Injury

7/26/72

Reported For Medical Attention

DATE: 7/26/72

TIME: 12:12

Inmate bleeding from nose (bleeding from nose) in apartment in apartment. Inmate started by officer.

TREATMENT:

None - Referred by Dr. White

Please Check DISPOSITION:

RETURN TO HOUSING AREA ☐

WORK RELEASE ☐ DAYS

LIGHT DUTY ☐ DAYS

RETURN TO DUTY ☐

RE-EXAM. ☐ DAYS

REFER TO CLINIC ☐

☐ TRANSFER TO HOSPITAL

Name Of Hospital

☐ OTHER (SPECIFY)

Discontinued/Re-evaluated

TREATED BY

Signature

K. J. W. H.

Title

R. P. A.

CHIEF MEDICAL OFFICER

Signature

INMATE CERTIFICATION

I CERTIFY THAT THE CAUSE OF INJURY AS STATED HEREIN IS TO MY KNOWLEDGE TRUE AND MEDICAL ATTENTION WAS PROVIDED.

INMATE

R. J. W. H.

Signature

Number

Date

WITNESSED BY

Signature

A. J. W. H.

Shield/ID No.

Title

Capt.

Date

7/26

TO BE COMPLETED BY INVESTIGATING OFFICER

INVESTIGATORS REPORT:

Investigator came out of prison attend to inmate. Inmate refused medical attention. Recommended R. J. W. H. for further investigation.

INVESTIGATING OFFICER

Signature

A. J. W. H.

Title

Capt.

Shield No.

115

Date

7/26

HEAD OF INSTITUTION OR DIVISION

INMATES

None

MEDICAL SUMMARY (Cont.)

000034

COURSE IN HOSPITAL OR CLINIC

Surgery on 8-2-73

PRESENT THERAPY (If diphtheria, record amount of anti-toxin given)

Centobactin: 100 mg 2 times daily

SEDATIVES	Amt. Prescribed	Time of Last Dose	A.M.		Amt.
				P.M.	

RECOMMENDED THERAPY

MENTAL STATUS (For psychiatric transfer give statements and behavior of patient indicating psychosis)

Normal

FINAL DIAGNOSIS

Injury left Pterygoid Bone

REASON FOR TRANSFER

Complete & regular treatment at Bellevue

Date 12 Oct 73 Signed [Signature]

M.D. Title [Signature]

In our opinion the patient described above is, at present, well able to withstand the handling and transportation necessary in the proposed transfer and his or her illness, as diagnosed above, will not be aggravated as a result of the transfer.

APPROVED BY

For Psychiatric Transfers

APPROVED BY

SIGNED BY

M.D. Visiting Physician Date 19

M.D. Neuro-Psychiatrist Date 19

M.D. Resident Physician Date 19

AUTHORIZATION FOR TRANSFER

ACCEPTED BY

Title

of Receiving Hosp. for Adm. on

19

If communicable disease patient, is patient to be returned to sending hospital after recovery from communicable disease? Yes ☐ No ☒

AUTHORIZED FOR TRANSFER BY

Adm. Sending Hospital Date

19

Department of Correction — Intradepartmental Memorandum

000035

Date : 7-25-73
From : CAPT D.A. MIRANTE #250
To : CAPT GORMAN IN COMMAND
Subject : CRUZ MARTINEZ - 346-73-544

1. APPROXIMATELY 12:00 PM ALARM SOUNDED IN PT 34734.
 2. ARRIVING TO PART. I OBSERVED INMATE MARTINEZ STRUGGLING WITH C.O. TUCKER #118 & C.O. HARRMAN #167 IN SMALL PEN WITH OTHER SUPREME CORRECTION OFFICERS ON OUTSIDE.
 3. C.O.'S WERE TRYING TO PLACE CUFFS ON INMATE WHO WAS ATTEMPTING TO STRUGGLE UNDER MY ORDERS INMATE WAS TRANSFERRED TO PT 34735 AS HE WAS RANTING AND SCREAMING AND I DID NOT WANT HIM TO INTERFERE WITH THE C.O.'S IN PROGRESS IN THAT PART.
 4. INMATE WAS STRUGGLING AND STILL ATTEMPTING ASSAULT ON OFFICER AND I ORDERED LEG RESTRAINTS ON INMATE.
 5. DR. SUGRUE CT. PEN DOCTOR WAS IMMEDIATELY NOTIFIED INMATE REFUSED ANY ATTENTION BY DOCTOR AND REFUSED TO ANSWER ANY QUESTIONS PUT FORTH BY ME.
 6. INVESTIGATION REVEALED THE FOLLOWING:
 1. C.O. TUCKER ASSIGNED TO THAT POST. CALLED OUT RIKER ISLAND AND THE INMATES WERE LEFT THE PEN.
 2. INMATE MARTINEZ SAID HE WAS RIKER ISLAND GUARD BUT LATER HE WAS PUNISHED C.O. TUCKER ASKED WHY HE DID NOT COME OUT WITH THEM POST - HE ANSWERED IN A STREAM OF PROFANITY.
 3. WHEN C.O. OPENED CELL TO LET INMATE OUT HE SHOOK AT C.O. TUCKER C.O. BOLLEN WHO WAS ON RIKER ISLAND PICK UP LAME TO HIS ASSISTANCE - AT THIS PARTICULAR TIME C.O. TUCKER RANG THE ALARM FOR FURTHER ASSISTANCE
 4. ATTACHED ARE C.O. J. HARRMAN #494 (1) C.O. A. TUCKER #118 (2) C.O. R. HARRMAN #167 (3) C.O. POST #1529 (4) C.O. VANCE #495 (5) C.O. BOLLEN #1101 (6) C.O. J. MCCOY #1225 (7) C.O. J. HARRMAN #1225 (8) C.O. BOLLEN #1101 (9) C.O. HARRMAN #233 (10) C.O. PARRISH #622 AND (11) C.O. BOLLEN #1101
- REPORT

000036

600A (9-71) 200M

Department of Correction — Intradepartmental Memorandum

PAGE 2

Date : 7-26-73
From : CAPT DA. MERANTE #210
To : CAPT GORMAN IN COMMAND
Subject : CRUZ MARTINEZ 346-73-544

11. ATTACHED ARE ALSO INFRACTION PAPERS ON ABOVE INMATE - INJURY REPORT (WHERE HE REFUSED TREATMENT), COPY OF DR. SCORSE REPORT - ATTACHED IS ALSO A STATEMENT BY WITNESS JAMES LEE SIMS 344-73-6190 TOLD FROM M.H.D.
12. INJURY REPORTS ON ① C.O. BOWEN # 1363 ② C.O. HARTMAN # 167 ③ C.O. TUDOR # 118 WERE ALSO MADE OUT
13. C.O.'S TUDOR, HARTMAN AND BOWEN DID NOT AT THIS TIME WISH TO PRESS CHARGES AS THEY BELIEVE INMATE WAS EMOTIONALLY UPSET AND DID NOT QUITE UNDERSTAND HIS RESPONSIBILITY.
14. INMATE IS AWAITING TRANSFER TO R.I.H. FOR MENTAL AND MEDICAL EVALUATION

Dominic A. Merante
Capt 212

DEF EXH F

000037

6608 (12-71) 240M

Department of Correction — Intradepartmental Memorandum

Date : 7/26/73
From : D. W. Sugrue, R.P.A.
To : Captain in Command, Manhattan Criminal Court House.
Subject : Tudor, Arthur J. #118

Above named C.O. seen by me this date for abrasion and contusion of left thumb suffered while restraining Martinez, Cruz Pedro 346-73-544
Mr. Tudor was also struck under the right eye.

[Signature]
Michael W. Sugrue, R.P.A.
Manhattan Criminal Court House

000038

7/26/73 250M

Department of Correction — Intradepartmental Memorandum

From : 7/26/73
To : C.O. R. Hartman 167
Subject : CAPT. CORMAN.
Responding To ALARM.

AT APPROX. 12 noon while in PT 30.
I RESPONDED TO EMERGENCY ALARM SOUNDED
IN PT 39, WHEN I ARRIVED I HELPED
SEVERAL OFFICERS RESTRAIN INMATE
PEDRO CRUZ MARTINEZ 346-73-544, WE PUT
HANDCUFFS ON SAID INMATE AND
ESCORTED HIM TO THE 12TH FLOOR BRIDGE
AREA. DURING THE RESTRAINING PROCESS I RECEIVED
INJURY TO MY LEFT THUMB.

Respectfully Submitted,
C.O. R. Hartman 167

DEF EXH H

000039

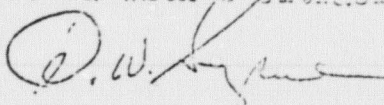
0003 (12-71) 240M

Department of Correction — Intradepartmental Memorandum

Date : 7/27/73
From : D. W. Sigrue, R.P.A.
To : Captain in Command - Manhattan Criminal Court Pens
Subject : Hartman, Richard B. #167

Above named officer was injured while restraining Martinez, Cruz
Padro Ek & Case #846-73-544 from injuring himself and others, 7/26/73.

C.O. #167 Hartman, Richard B. suffered minor lacerations on the left
thumb. On this date there is a minor infection in the lacerations.
Wounds were cleansed and dressed with bacitracin ointment and a
dry sterile dressing.


D. W. Sigrue, R.P.A.

000040

(200) (12-72)

Department of Correction — Intradepartmental Memorandum

Date : July 26, 1973

From : C.O. C. Beaman #1743

To : Capt. Goodman

Subject : Restraining of inmates

Sir,

While picking up inmates for
 Prison detail, I saw Officer [unclear]
 struggling with inmate [unclear]
 identified as James Craig [unclear]
 I went and helped Officer [unclear]
 restrain and put inmate into cell
 in the process of being [unclear] [unclear]
 respectfully

Charles Beaman
 C.O. # 1743

DEF EXH J

000041

6000 (12-71) 24034

Department of Correction -- Intradepartmental Memorandum

Date : 7/27/73

From : D. W. Sugrue, R.P.A.

To : Captain in Command -- Manhattan Criminal Court House

Subject : Owens, Charles #1363

Above named officer suffered contusion to tricep left arm and to 2nd knuckle of right hand when pushed into bars by Martinez, Cruz Pedro, 346-73-544 on 7/26/73

Rx: Valium 10 mg. p.o. stat & bid.

Hpt soaks qid.

To see private physician if pain persists

D. W. Sugrue, R.P.A.

000042

6003 (12-70)

Department of Correction — Intradepartmental Memorandum

Date : 7/26/73
From : C.O. McQuay 1813
To : CAPT. GORMAN
Subject : ANSWERING HQRM

At approx 1:30^{pm} noon the alarm sounded in Pt. 39.
I responded and found several officers trying to restrain
an inmate, later identified as Delmar Craig Martinez,
I assisted said officers in removing the inmate from Pt 39
to the holding pens in Pt. 31.

Respectfully Yours
C.O. McQuay 1813

DEF EXH C

000043

66011 (12-71) 24011

Department of Correction — Intradepartmental Memorandum

Date : 7/27/73
From : D. W. Sigruc, R.P.A.
To : Captain in Command — Manhattan Criminal Court House
Subject : Mc Nulty, Joseph M. #1813

Above named officer was injured on 7/26/73 while restraining
Martinez, Cruz Pedro 346-73-544.
Mr. McNulty suffered an abrasion and multiple contusions on the
left flank and scalp. Contusion over left eye.

Ax: Vaseline to eye
Chymoral av tabs stat 11 tabs bid.
Hot soaks qid.
To see private physician if pain persists.

D. W. Sigruc, R.P.A.

Department of Correction -- Intradepartmental Memorandum

PLFS EXH 4
Fon Fon 1

Date : August 6, 1973 0000440.63
 From : Captain-in-Command, Manhattan Court Detention Pens
 To : Commissioner of Correction (Through Channels)
 Subject : ASSAULT ON OFFICER (ARTHUR TUDOR SHIELD #118)

1. At approximately 12:00 noon on Thursday July 26, 1973, inmate Cruz Martinez, Book #346/73 Case #544, 30 years of age of 325 Columbus Ave. charged with Rape in the 1st Degree, indictment #881/73 and a NACC warrant issued on February 26, 1973 after appearance in Supreme Court Part 30 on the 12th floor did use abusive language and profanity and assaulted Correction Officer Arthur Tudor, Shield #118 by striking him on the right side of the face just below the right eye as he was coming out of the pen.

2. My investigation reveals the following series of events: Captain Dominic Merante, Shield #167 responded to the alarm on the 12th floor Supreme Court Part 30 at 12 noon and observed inmate Cruz Martinez struggling with Correction Officer Tudor and Correction Officer Richard Hartman Shield #167 in the detention pen as they were trying to restrain inmate by placing handcuffs on him. At this time the inmate was ranting and screaming and in order not to interfere with the Court which was still in session the inmate was ordered by Captain Merante to be transferred to Part 30 on the same floor. The inmate continued to struggle and was attempting to assault with his feet, other officers who responded to the emergency alarm whereupon Captain Merante ordered her restraints to be put on. Captain Merante stated in his report "that inmate Martinez refused to answer any questions put forth by him. Officer Tudor stated in his report "that inmate Cruz Martinez failed to come out of the pen when he called out other inmates to be transferred to Rikers Island." He then went on to state "that he heard abusive language coming from said pen and after approximately five minutes he returned to the pen to let the inmate out to go to Rikers Island, whereupon he then threatened and proceeded to assault him by striking him below the right eye. This was witnessed by inmate James Lee Sims Book #42/73 Case #6199 from the Manhattan House of Detention who signed a written statement. Dr. Sugrus of the Manhattan Court Detention Pens was notified but inmate Cruz Martinez refused medical attention. The following Correction Officers responded to the alarm and assisted in restraining and the transfer of inmate Martinez to Part 30 of Supreme Court: C.O.'s Joseph McMulty #1813, Charles Povens, #1363, Eugene Howard, #223, Lawrence Fenini #622, Thomas McCoy #2226, Robert Russell #11401, Arthur Post #1679, Joseph McManara #984, Salvatore Vincent #988 and Lenorris Richardson #2034.

Department of Correction — Intradepartmental Memorandum 000045

Date : PAGE TWO
From :
To :
Subject :

MCDP NO. 63/73

The following Correction Officers sustained injuries due to the assault and the restraining of inmate Cruz Martinez: Arthur Tudor, Joseph McMulty, Richard Hartman, and Charles Ewens.

3. Upon my arrival in Supreme Court Port 30, inmate Martinez had quieted down and I ordered the leg restraints removed in order to transfer inmate to the basement to await the arrival of Transportation. To put him more at ease, I offered Martinez a cigarette which he accepted and as he was being walked out of Port 30 to be transferred to Rikers Island Hospital as recommended by Dr. Surue for complete workup by a psychologist for evaluation of mental condition, inmate suddenly bolted and ran towards other inmates who were being transferred to the Manhattan House of Detention for Men and began yelling and screaming at them trying to incite them to riot. He was then placed in leg restraints and transferred to Rikers Island Hospital.

4. Inspector General Mr. Katz was notified of the incident and informed of inmate Cruz Martinez attempt to incite the inmates from the Manhattan House of Detention to riot. Deputy Warren Tulman of Rikers Island Hospital was notified and C.O. E. Gastone of the Director of Operations office.

5. In conclusion I feel that inmate Cruz Martinez created this incident for his own purpose and tried to incite others to join him. Inmate was received from the Manhattan House of Detention in the morning and then tried to get mixed up with the Rikers Island cases who were returning to Rikers Island after having been to Court.

The Correction Officers involved and Captain Merante responded to the alarm without delay, which helped keep the incident isolated and under control and used only such restraint as was necessary to handcuff inmate and to protect themselves and him from further injury.

James E. Gorman
Captain-in-Command

000046

1 per Motion
Are we making
on one count or three
separate counts?

Court

L. Epp
Townsend

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

1

000047

If you should find in favor of the plaintiff, state what specific acts were committed by each defendant in deprivation of the plaintiff's civil rights.

If you should find in favor of the plaintiff, state the specific personal involvement of each defendant in depriving plaintiff's civil rights.

Separate verdicts.

00607
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

J

GENERAL VERDICT

1. AS TO DEFENDANT MALCOLM. WE THE JURY FIND IN FAVOR OF (PLAINTIFF IN THE SUM OF \$) (DEFENDANT)
2. AS TO DEF SCHAEFER. WE THE JURY FIND IN FAVOR OF (PLAINTIFF IN THE SUM OF \$) (DEFENDANT)
3. AS TO DEFENDANT GORMAN. WE THE JURY FIND IN FAVOR OF (PLAINTIFF IN THE SUM OF \$) (DEFENDANT)

INTERROGATORIES

1. DID DEFENDANT MALCOLM KNOW OF PLAINTIFFS EXERCISE OF HIS RIGHT OF FREE SPEECH?
2. DID DEFENDANT SCHAEFER KNOW OF PLAINTIFFS OUTSPOKENNESS?

3. WAS PLAINTIFF SUBJECT TO A CAMPAIGN OF HARASSMENT AND INTIMIDATION BECAUSE OF HIS ACTIVITIES ON THE INMATE LIAISON COMMITTEE AND IN THE LAW LIBRARY?

4. DID DEFENDANT SCHAEFER KNOW THAT PLAINTIFF WAS BEING HARASSED AND INTIMIDATED FOR HIS ACTIVITIES ON THE INMATE LIAISON COMMITTEE OR IN THE LAW LIBRARY?

5. DID DEFENDANT SCHAEFER HAVE A DUTY TO PREVENT SUCH INTIMIDATION AND HARASSMENT?

6. WAS THE DISCIPLINARY CHARGE OF JANUARY 19, 1974 AND THE SUBSEQUENT FAILURE TO LET PLAINTIFF OUT OF SEPARATION A RESPONSE BY DEFENDANT SCHAEFER TO PLAINTIFFS SPEECH AT THE MARTIN LUTHER KING OBSERVANCE?

7. WAS EXCESSIVE FORCE USED AGAINST

PLAINTIFF ON ~~JANUARY~~ ^{JULY} 26, 1973?

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8. DID DEFENDANT GORMAN HAVE ACTUAL KNOWLEDGE OF THE FORCE USED AGAINST PLAINTIFF ON JULY 26, 1973?

9. DO YOU FIND THAT IMMEDIATELY FOLLOWING THE JULY 26, 1973 INCIDENT, THE DEFENDANTS EXHIBITED A DELIBERATE INDIFFERENCE TO PLAINTIFFS MEDICAL NEEDS?

10. IF SO, WHICH DEFENDANT IS RESPONSIBLE?

11. WAS EXCESSIVE FORCE USED AGAINST PLAINTIFF ON DECEMBER 11, 1973?

12. WAS DEFENDANT SCHAEFER REQUIRED TO ACT TO PREVENT PHYSICAL ASSAULTS ON PLAINTIFF?

